

BOARD OF APPEALS CASE NO. 017

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BEFORE THE

APPLICANT: Francis Dougherty and
Josephine Miller/Harford County

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ZONING HEARING EXAMINER

REQUEST: Rezone 10± acres of a
16.28 acre tract from AG (Agricultural)
to RR (Rural Residential);
3525 Fallston Road, Fallston

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 12/19/85 & 12/26/85

HEARING DATE: January 20, 1986

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Record: 12/18/85 & 12/24/85

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ZONING HEARING EXAMINER'S DECISION

The Applicants seek rezoning from AG (Agricultural) to RR (Rural Residential) of 10± acres of land located in the Fourth Election District of Harford County, and known as 3525 Fallston Road. The application is founded upon mistake in the Comprehensive Rezoning in 1982. The Department of Planning and Zoning, in its report dated January 16, 1986, admitted a mistake in a mapping error during the comprehensive zoning process.

Section 3.3 of the Staff Report states as follows:

"This site was considered during the comprehensive review as were all properties in the County in some fashion. The surrounding and adjoining areas on the north and east sides have recorded subdivision plats on record with a majority of the lots developed. The site is a long and narrow parcel of land and while is presently being farmed, it is not large enough in itself to be considered usable farmland. The adjoining residential lots could place pressures and have an adverse impact on the farming of the small parcel. It was for this reason the Department proposed to rezone the parcel along with the adjoining subdivision to an RR classification. Both work maps and the Department's overall display maps reflect the parcel as RR. However, during the drafting of the larger scale Tax Maps, the Zip-a-tone symbol was not matched on one of the two maps. Map 31 reflects the RR symbol while Map 38 on the south was left AG by mistake.

At the request of Ebenezer United Methodist Church, the Department reviewed the maps and concluded that there was in fact a mapping error. It was determined that RR classification was to cover all of parcel 114 or the 16± acres. This type of mapping error occurred in several instances where properties appear on two tax maps."

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In Westview Park v. Hayes, 256 Md. 575, the Court of Appeals stated that, "it is no longer necessary to do more than restate the Maryland rule. There is a strong presumption of the correctness of original zoning of of comprehensive rezoning...and to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning, or of a substantial change in conditions..."

In Agneslane Inc. v. Lucas, 247 Md. 612, the Court of Appeals referred to the burden of proof as "onerous". As noted earlier, the Applicant relies solely upon the issue of mistake. With the regard to the issue of mistake, the Court of Special Appeals in Boyce v. Sembly, 25 Md. App. 43 stated,

"A perusal of cases, particularly those in which a finding of error was upheld, indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension...cases cited...Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in Rockville v. Stone, 271 Md. 655, 662, 319 A. 2d 536, 541 (1974):

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."...cases cited...

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning...by adducing testimony on the part of those preparing the plan that then existing facts were not taken into account...or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning..."

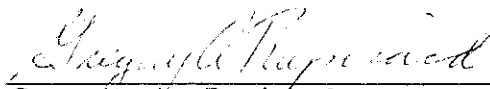
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The Hearing Examiner finds that a mistake did occur during the comprehensive zoning process, and that the property should have been zoned Rural Residential. Work maps and the display maps of the Department of Planning and Zoning reflect the parcel as Rural Residential. Map 31 reflects the Rural Residential symbol, while Map 38 on the south was left Agricultural by mistake.

Accordingly, the Harford County Council, during adoption of the Zoning Maps, did not have accurate information in which to zone the property Agricultural.

The Hearing Examiner recommends that the area noted on Map 38, designated as Agricultural (AG) be rezoned to Rural Residential (RR).

Date February 18, 1986



Gregory A. Rapisarda
Zoning Hearing Examiner